

ORIGINAL

FEDERAL MARITIME COMMISSION

MONARCH SHIPPING LINES, INC.,
AMERICAN LINES LLC, MOZART
FORWARDING, INC. AND PETER
KAROUTA KENNEDY - POSSIBLE
VIOLATIONS OF SECTIONS 8(A),
10(B)(2)(A) AND 19 OF THE
SHIPPING ACT OF 1984, AS WELL
AS THE COMMISSION'S
REGULATIONS AT 46 C.F.R. §§
502.515 AND 502.520

Docket No. 03-06

Served: January 26, 2004

ORDER DENYING MOZART FORWARDING, INC.3
MOTION TO COMPEL AND AMENDING THE
ORDER OF INVESTIGATION AND HEARING

The Commission instituted an Order of Investigation on June 17, 2003, to determine whether Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc. ("Mozart" or "Respondent") and Peter Karouta Kennedy violated sections 8(a), 10(b)(2)(A), and 19 of the Shipping Act of 1984, 46 U.S.C. app. §§ 1707(a), 1709(b)(2)(A), and 1718, and the Commission's regulations. The Order of Investigation seeks, inter alia, to determine whether Mozart and its president and owner, Peter Karouta Kennedy, violated the Commission's regulations at 46 C.F.R. Part 5 15 by failing to disclose required

information on Mozart's pending FMC- 18 application for a non-vessel-operating common carrier ("NVOCC") license. Further, in the event a violation is found, the Order seeks to determine whether the existing ocean transportation intermediary ("OTI") license of Mozart should be suspended or revoked pursuant to section 19 of the Shipping Act.

Mozart currently holds a license to operate as an ocean freight forwarder. It submitted an application in March 2002, to amend its license to permit it to operate as an NVOCC. On the basis that the Commission has failed to act promptly upon its application, as required by the Commission's rules at 46 C.F.R. §502.8, Mozart filed a Motion to Compel on December 12, 2003, asking that the Administrative Law Judge ("ALJ") compel the Commission to act upon its application. The ALJ subsequently referred Mozart's Motion to the Commission, finding that he does not have the authority to act on such a request. As a result, the instant Motion is now before the Commission.

BACKGROUND

A. Mozart's Motion to Compel

Mozart urges that the Commission be compelled to act upon its application, arguing that although it filed its application on or about March 26, 2002, the Commission has not acted upon it to date. Mozart asserts that the Commission has a duty to act promptly upon its application pursuant to Rule 8¹ of the

¹Rule 8 provides for prompt written notice of a denial of any
(continued;..)

Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.8, and that the "non-action of commission (sic) has, and or will damage Mozart's ability to carry on business, with out (sic) a valid reason." Mozart at 1.

B. Reply of the Bureau of Enforcement

The Bureau of Enforcement ("BOE") requests that Mozart's Motion be denied, arguing that Mozart has neither provided authority upon which the ALJ may mandate the issuance of an OTI license, nor a factual basis for its assertion that it is able to conduct business as an NVOCC. BOE Reply at 2. BOE further asserts that because Mozart's entitlement to retain its existing OTI license is at issue in the instant proceeding, it is not logical for Respondent to demand that the presiding officer determine whether its license should be amended to allow it to operate as an NVOCC while a revocation proceeding against its current license is being pursued. *Id.* In addition, BOE notes, citing Saeid B. Maralan (aka Sam Bustani), et al. - Possible Violations of Sections 8(a)(1), 10(b)(1), 19(a) and 12(a) of the Shipping Act of 1984, 28 S.R.R. 1244, 1248 (1999), that no authority was given to the ALJ in the Order of Investigation to grant an amendment to Mozart's license. BOE further notes that licensing authority is delegated to the Commission's Bureau of Consumer Complaints and Licensing ("BCCL"). *Id.* at 2-3 (citing 46 C.F.R. § 501.27).

¹(...continued)

written application and the reasons therefor.

C. ALJ's Decision

Citing Rule 73(a) of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.73(a), Exneditors International of Washington, Inc. - Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shinning Act of 1984, 28 S.R.R. 1072 (1999), and Kelly and West Indies Shipping and Trading Inc. - Possible Violations of the Shipping Act of 1984, 28 S.R.R. 1476 (2000), the ALJ ruled that although Mozart's Motion was appropriately directed to him, an ALJ does not have the authority to act on such a request. ALJ Ruling at 3. The ALJ then referred the instant Motion to the Commission.

DISCUSSION

A. ALJ's Referral of the Motion to the Commission

Pursuant to Rule 73(a), after the assignment of a presiding officer to a proceeding, and before the presiding officer has issued an initial decision, all motions shall be addressed to and ruled on by him or her unless the subject matter of that motion exceeds his or her authority. 46 C.F.R. § 502.73(a). Further, the authority to determine whether a license should be issued to an OTI is delegated to BCCL by Commission regulation. 46 C.F.R. § 501.27. Neither the Commission's regulations nor the Order of Investigation authorize the ALJ to compel the Commission to act upon Mozart's application. Therefore, the ALJ was correct to find that Mozart's Motion to Compel exceeds his authority and is more properly referred to the Commission.

B. Merits

The Commission's OTI regulations at 46 C.F.R. § 5 15.15, provide that the Commission shall send to the applicant a letter of its intention to deny the application if it determines that an applicant does not possess the necessary character to render OTI services or has made any materially false or misleading statement to the Commission in connection with its application.

The instant Order of Investigation seeks to determine whether Mozart and its president and owner, Peter Karouta Kennedy, violated the Shipping Act and the Commission's regulations at 46 C.F.R. Part 5 15 by knowingly and willfully failing to disclose required information on Mozart's pending FMC-18 application for an NVOCC license. Further, it also seeks to determine whether Mozart's existing OTI license should be suspended or revoked in the event violations are found.

While the Order of Investigation does not explicitly require the determination of whether Mozart's pending application for an NVOCC license should be denied, it does put into question the issue of whether Mozart and Peter Karouta Kennedy have the necessary character to obtain an NVOCC license. See 46 C.F.R. § 515-11(a)(1). Thus, implicit in the investigation is the issue of whether Mozart's FMC-18 application should be denied. We believe it would be imprudent to permit an applicant to amend its license to allow it to operate as an NVOCC while we are determining whether the applicant possesses the necessary fitness to retain its existing license as an ocean freight forwarder. We therefore deny


Mozart's Motion to Compel the Commission to act upon its application to obtain an NVOCC license.

We have determined to amend the Order of Investigation and Hearing to include the issue of whether, in the event violations are found, Mozart's pending FMC-18 application for an NVOCC license should be denied.

THEREFORE, IT IS ORDERED, That Mozart Forwarding, Inc.'s Motion to Compel is denied; and

IT IS ALSO ORDERED, That the Order of Investigation and Hearing is amended to include the issue of whether Mozart Forwarding, Inc.'s pending FMC-18 application to amend its license to operate as an NVOCC should be granted or denied.

By the Commission.


Bryant L. VanBrakle
Secretary